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STATUTORY INSTRUMENTS

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**1996 No. 843 (S.98)**

**NATIONAL HEALTH SERVICE, SCOTLAND**

**The National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 1996**

<i>Made</i>	- - - -	<i>18th March 1996</i>
<i>Laid before Parliament</i>		<i>19th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State, in exercise of powers conferred on him by sections 26, 32E, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (General Ophthalmic Services) Amendment Regulations 1996 and shall come into force on 1st April 1996.

(2) In these Regulations, “the principal Regulations” means the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986(2).

**Amendment of regulation 2 of the principal Regulations**

2. In regulation 2(1) of the principal Regulations (interpretation), after the definition of “the Statement” insert—

““suspended by direction of the Tribunal” means suspended as respects the provision of general ophthalmic services to patients by a direction of the Tribunal made pursuant to section 32A(2) or section 32B(1) of the Act(3) or to any provisions in force in England and Wales or Northern Ireland corresponding to those provisions;”.

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(1) 1978 c. 29; section 26 was amended by the Health and Social Security Act 1984 (c. 48), section 1(5) and (7) and Schedule 1, Part II, paragraphs 1 to 4 and Schedule 8 and by the Health and Medicines Act 1988 (c. 49), section 13(4); section 32E was inserted by the National Health Service (Amendment) Act 1995 (c. 31), section 8; section 105(7), which contains provisions relevant to the making of Regulations, was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made.

(2) S.I. 1986/965; amending instruments are 1988/543, 1989/387 and 1177, 1990/1048, 1991/534, 1992/531 and 1995/704.

(3) Sections 32A and 32B were inserted by section 8 of the National Health Service (Amendment) Act 1995.

### **Amendment of regulation 6 of the principal Regulations**

3. In regulation 6(4) of the principal Regulations (ophthalmic list), at the end of paragraph (1) insert—

“in its area and who are not disqualified from inclusion by virtue of the provisions of sections 30(1), 31, 32A(3), 32B(1) or 32D(2) of the Act(5)

### **Amendment of regulation 7 of the principal Regulations**

4. In regulation 7(6) of the principal Regulations (application for inclusion in ophthalmic list and notification of changes), in paragraph (1)—

(a) at the end of sub-paragraph (a), omit “and”;

(b) at the end of sub-paragraph (b), insert—

“; and

(c) a declaration that he is not suspended by direction of the Tribunal.”.

### **Amendment of regulation 9 of the principal Regulations**

5. In regulation 9(7) of the principal Regulations (removal from ophthalmic list), after paragraph (2) insert the following new paragraph:—

“(2A) In calculating the period of six months referred to in paragraph (2) a Board shall disregard any period during which the contractor provided no general ophthalmic services by reason only that he was suspended by direction of the Tribunal.”.

### **Substitution of regulation 13 of the principal Regulations**

6. For regulation 13 of the principal Regulations (payment for services) there shall be substituted the following regulation:—

#### **“Payment for services**

13.—(1) Each Board shall make or cause to be made to contractors within their area payments in accordance with the Statement, and any payments which may become due to contractors by virtue of arrangements made under regulation 12.

(2) Where in accordance with regulation 14B(4)(8) a Board has paid to a patient in respect of a testing of sight an amount which exceeds the fee payable to the contractor, in accordance with the Statement, for that testing, it shall deduct the excess from remuneration otherwise payable to the contractor.

(3) Where a Board considers that it has made a payment to a contractor owing to an error or in circumstances where it was not due, it shall, except to the extent that the Secretary of State on the application of the Board directs otherwise, draw the overpayment to the attention of the contractor and—

(a) where he admits the overpayment; or

(b) where he does not admit the overpayment but, the matter having been referred under regulation 8(1) of the National Health Service (Service Committees and

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(4) Regulation 6 was substituted by S.I. 1988/543, regulation 3.

(5) Section 32D was also inserted by section 8 of the National Health Service (Amendment) Act 1995.

(6) Regulation 7 was amended by S.I. 1988/543, regulation 4.

(7) Regulation 9 was amended by S.I. 1988/543, regulation 4.

(8) Regulation 14B was inserted by S.I. 1989/387, regulation 4.

Tribunal) (Scotland) Regulations 1992<sup>(9)</sup> for investigation, the Board or the Secretary of State on appeal under regulation 12 of those Regulations, decides that there has been an overpayment,

the amount overpaid shall be recoverable by a deduction from the contractor's remuneration or in some other manner.

(4) Recovery of an overpayment under the provisions of this regulation shall be without prejudice to the investigation of an alleged breach of the terms of service.

(5) A contractor who is unable to complete for a patient the general ophthalmic services which he has undertaken to provide shall inform the Board accordingly in writing, and if the Board is satisfied that the inability is due to a reasonable cause it shall make payment in accordance with the Statement to the contractor for such part of those services as he shall have provided.”.

### **Payments to suspended contractors**

7. After regulation 13 of the principal Regulations insert the following new regulation:—

#### **“Payments to contractors suspended by direction of the Tribunal**

**13A.**—(1) A Board shall make payments to any contractor who is suspended by direction of the Tribunal in accordance with the Secretary of State's determination for the time being in force in relation to such payments.

(2) The Secretary of State shall make the determination in accordance with paragraphs (3) and (4) after consultation with the organisations referred to in regulation 10(1), and it shall be published with the Statement there referred to.

(3) Subject to paragraph (4), the Secretary of State's determination shall be such as to secure that, as far as reasonably practicable, the suspended contractor receives payments at a rate corresponding to his remuneration by virtue of regulation 10 during the 12 months ending with the direction for suspension by the Tribunal.

(4) The Secretary of State's determination may include provision that payments in accordance with the determination are not to exceed a specified amount in any specified period.

(5) In a case to which section 32B(3) of the Act applies, the determination shall provide for the amount by which a suspended contractor's payments are to be reduced to take account of any payments which he receives for providing general ophthalmic services other than as a principal.

(6) Regulation 10(2) shall apply to determinations under this regulation as it applies to determinations under that regulation.

(7) Regulation 13(3) shall apply to payments made under this regulation as it applies to payments made under that regulation.”.

### **Amendment of Schedule 1 to the principal Regulations**

**8.**—(1) Schedule 1 to the principal Regulations (terms of service for ophthalmic medical practitioners and opticians) shall be amended as follows.

(2) In paragraph 2 (incorporation of provisions) in sub-paragraph (b)—

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(9) S.I. 1992/434, amended by S.I. 1994/3038 and 1995/3201.

- (a) for “Part III of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1974” substitute “the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992”; and
  - (b) in head (i) for “ophthalmic service committee” substitute “ophthalmic discipline committee”.
- (3) For paragraph 5 (Notices) substitute—

**“Notices**

**5.** A contractor shall secure that at each place at which he provides general ophthalmic services there is prominently displayed a notice and leaflet supplied or approved by the Board, indicating the services available under general ophthalmic services and indicating to which descriptions of his patients a payment may be made under the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1989<sup>(10)</sup>.”

(4) In paragraph 7 (deputies) in sub-paragraph (1), omit the words “disqualified under section 29 of the Act from inclusion in the ophthalmic list of any Board” and insert—

- “(a) who, having been disqualified under section 29(3)(b) of the Act (or under any corresponding provision in force in England and Wales or Northern Ireland) from inclusion in the ophthalmic list of any Board (or in England and Wales of a Health Authority or in Northern Ireland of a Health and Social Services Board), is also the subject of a declaration under section 29(3)(c)<sup>(11)</sup> of the Act (or any corresponding provision in force in England and Wales or Northern Ireland) that he is not fit to be engaged in any capacity in the provision of general ophthalmic services; or
- (b) who is suspended by direction of the Tribunal, other than in a case falling within section 32B(3) of the Act”.

(5) In paragraph 8 (employees), for sub-paragraph (3) substitute—

“(3) A contractor shall not employ in the provision of general ophthalmic services any person—

- (a) who, having been disqualified under section 29(3)(b) of the Act (or under any corresponding provision in force in England and Wales or Northern Ireland) from inclusion in the ophthalmic list of any Board (or in England and Wales of a Health Authority or in Northern Ireland of a Health and Social Services Board), is also the subject of a declaration under section 29(3)(c) of the Act (or any corresponding provision in force in England and Wales or Northern Ireland) that he is not fit to be engaged in any capacity in the provision of general ophthalmic services; or
- (b) who is suspended by direction of the Tribunal, other than in a case falling within section 32B(3) of the Act.”.

(6) After paragraph 8, insert the following new paragraphs:—

**“Complaints**

**8A.**—(1) Subject to sub-paragraphs (2) and (3), a contractor shall establish and operate in accordance with this paragraph, a procedure (in this paragraph and in paragraph 8B referred to as a “complaints procedure”) to deal with any complaints made by or on behalf of his patients and former patients.

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<sup>(10)</sup> 1989/392, amended by S.I. 1990/509, 1991/534, 1731 and 2487, 1992/531, 1993/524, 1994/145 and 635, 1995/1, 705 and 2369.

<sup>(11)</sup> Section 29(3)(c) was inserted by the National Health Service (Amendment) Act 1995 (c. 31), section 7.

(2) The complaints procedure to be established by a contractor may be such that it also deals with complaints made in relation to one or more other contractors.

(3) The complaints procedure to be established by a contractor who provides general ophthalmic services from more than one set of premises may be such that it relates to all those premises together.

(4) A complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the contractor's provision of general ophthalmic services and within the responsibility or control of—

- (a) the contractor;
- (b) where the contractor is a body corporate, any of its directors or former directors;
- (c) a former partner of the contractor;
- (d) any other person (being an optician, an ophthalmic medical practitioner or a person authorised to test sight by rules made under section 24(3) of the Opticians Act 1989<sup>(12)</sup>) who is either employed by the contractor or engaged as his deputy;
- (e) any employee of the contractor other than one falling within paragraph (d), and in this paragraph and paragraph 8B, references to complaints are to complaints falling within this sub-paragraph.

(5) A complaint may be made on behalf of a patient or former patient with his consent, or—

- (a) where the patient is a child under the age of 16 years—
  - (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child, or
  - (ii) in the care of an authority under Part II of the Social Work (Scotland) Act 1968<sup>(13)</sup>, or in the care of a voluntary organisation, by that authority or voluntary organisation; or
- (b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(6) Where a patient has died, a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient was as described in head (a)(ii) of sub-paragraph (5), by the authority or voluntary organisation.

(7) A complaints procedure shall comply with the following requirements:—

- (a) the contractor shall specify a person (who need not be connected with the contractor and who, in the case of an individual, may be specified by his job title) to be responsible for receiving and investigating all complaints;
- (b) all complaints shall be—
  - (i) recorded in writing,
  - (ii) acknowledged, either orally or in writing, within the period of three days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and other public or local holidays agreed with the Board) beginning with the day on which the complaint was received by the person specified in head (a), or where that is not possible, as soon as reasonably practicable, and
  - (iii) properly investigated;
- (c) within the period of 10 days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and any other public or local holidays agreed with the Board) beginning

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<sup>(12)</sup> 1989 c. 44.

<sup>(13)</sup> 1968 c. 49.

on the day on which the complaint was received by the person specified in head (a), or where that is not possible, as soon as reasonably practicable, the complainant shall be given a written summary of the investigation and its conclusions;

- (d) where the investigation of the complaint requires consideration of the patient's sight testing records, the person specified under head (a) shall inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the contractor, or a director, partner, deputy or employee of the contractor; and
- (e) the contractor shall keep a record of all complaints and copies of all correspondence relating to complaints, but such records shall be kept separate from patients' sight testing records.

(8) At each of the premises at which the contractor provides general ophthalmic services he shall provide information about the complaints procedure which he operates and give the name (or title) and address of the person specified in sub-paragraph (7)(a).

**8B.**—(1) A contractor shall cooperate with any investigation of a complaint by the Board in accordance with the procedures which it operates in accordance with directions given under section 2(5) of the Act(14), whether the investigation follows one under the contractor's complaints procedure or not.

- (2) The co-operation required by sub-paragraph (1) includes—
  - (a) answering questions reasonably put to the contractor by the Board;
  - (b) providing any information relating to the complaint reasonably required by the Board; and
  - (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given), if the contractor's presence at the meeting is reasonably required by the Board.

### **Complaints against ophthalmic medical practitioners**

**8C.**—(1) A contractor who, being an ophthalmic medical practitioner also provides general medical services, shall secure that the practice based complaints procedure he has established and operates in accordance with paragraph 12A of the doctors' terms of service(15) applies in relation to any matter reasonably connected with his provision of general ophthalmic services as it applies as respects his provision of general medical services.

(2) Paragraph 12B of those terms of service also applies in relation to such complaints as are mentioned in paragraph (1).”.

(7) In paragraph 11 (use of disqualified name), in sub-paragraph (1), at the end insert “by virtue of the provisions of sections 30(1), 31, 32A(3), 32B(1) or 32D(2) of the Act.”.

St Andrew's House, Edinburgh  
18th March 1996

*James Douglas-Hamilton*  
Minister of State, Scottish Office

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(14) Section 2(5) was amended by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 19(1).  
(15) See Schedule 1 of S.I. 1995/416. Paragraph 12A was inserted in Schedule 1 by S.I. 1996/842.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986 (S.I.1986/965) to make provision relating to ophthalmic medical practitioners and ophthalmic opticians (“contractors”) who have been suspended from the provision of general ophthalmic services by the NHS Tribunal or whom the Tribunal has declared not fit to be engaged in any capacity in the provision of those services. The Regulations also provide for payments to suspended contractors.

The Regulations also amend Schedule 1 of the 1986 Regulations (contractors' terms of service) as follows:—

1. To prevent the employment, as an assistant or deputy, of any contractor suspended by the Tribunal who is also subject to a declaration by the Tribunal that he is not fit to be engaged in any capacity in the provision of general ophthalmic services.

2. To stipulate that a contractor must display at each place where he provides general ophthalmic services a notice and leaflet (to be supplied or approved by the Health Board) giving patients information about the optical voucher scheme whereby eligible persons can obtain help, by means of a voucher system, with costs incurred in connection with the supply, replacement and repair of optical appliances.

3. To require a contractor to establish and operate a system to deal with complaints. There is provision about who may complain, what they may complain about and how such complaints are to be dealt with and the publicity which a contractor must give to his complaints procedure. A contractor is also required to cooperate with complaints procedures which are operated by Health Boards.

The Regulations also make other minor amendments.